IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI.APPEAL NO.198 OF 1997

Shashikant @ Pappu Bhaskar Kale, Aged 22 years, Occ: Driver, reisding at Renuka Nagar, Vadala Naka, Puna Road, Nasik (Presently lodged in Nasik Central Jail]..Appellant

Vs.

The State of Maharashtra]..Respondent

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Mr. Ranjeet Bhosale Advocate for Appellant
Mr. S.S.Pednekar A.P.P.for Respondent

CORAM: SMT.RANJANA DESAI & SMT.V.K.TAHILRAMANI,JJ.

DATE : JANUARY 24, 2007

ORAL JUDGMENT: [PER SMT.V.K.TAHILRAMANI,J.]:

1. This appeal is directed against the judgment and order dated 30.1.1997 passed by the learned 3rd Adhoc Additional Sessions Judge, Nasik in Sessions Trial Case No. 126 of 1996. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to life imprisonment and to pay a fine of Rs.1000/- in default R.I. for three months.

2. The prosecution case briefly stated, is as under:

. Deceased Sunita Jamnadas Sharma was residing near Pethe School, in Nasik city. She was married to Jamnadas Sharma (P.W.2). She had three children. P.W.3 Jayashree is the eldest daughter who was aged about 10 years and two minor sons Durgesh and Vijay. The accused was residing at Renuka Nagar in Nasik city. He was unmarried. Sunita was married to Jamnadas Sharma about 12 years prior to the incident. There is a huge gap of 20 years between age of Jamnadas and Sunita. At the time of incident, Sunita was about 28 years of age whereas, Jamnadas was 48 years of age. Sunita was of slightly flirtatious nature. Jamnadas was serving in Nasik Municipal Corporation as a night watchman. Every night, he used to leave his house at about 9.00 p.m. and come home at about 8.00 a.m. on the next day. One year prior to the incident, the accused and Sunita developed some illicit relations. On account of this, the accused was regularly visiting the house of Sunita after her husband left the house. On the night of the incident i.e. 16.2.1996 at about 10.00 p.m., the accused entered

the house of deceased Sunita. At that time, P.W.2 Jamnadas as usual, was out of house attending his night watchman duties. Three children who were at home, were sleeping. Little after mid night, there was altercation between Sunita and the accused regarding some photos. In the course of the quarrel, the accused poured kerosene on the person of Sunita and set her on fire. The heat of the fire awoke the children including P.W.3 Jayashree. When Jayashree woke up, she saw her mother burning and accused who was there in the house, immediately ran away. Thereafter, P.W.2 Jamnadas came to be informed. Jamnadas immediately came home. He made enquiries with Sunita. Thereupon, Sunita informed him that the accused poured kerosene on her person and set her on fire. Jamnadas admitted Sunita in the District Civil Hospital at Nasik. After Sunita was admitted in the hospital, the hospital authorities made a telephone call to Ambad Police Station and informed them. P.W.11 A.P.I. D.T.Adangale, arrived at the hospital at about 5.30 a.m. He obtained medical fitness certificate of Sunita from the doctor and he recorded statement (Exhibit-32) of Sunita. Sunita informed him that accused poured kerosene on her and set her on fire.

On the basis of this statement, C.R.No.26 of 1996 came to be registered. Thereafter, another statement of Sunita came to be recorded by P.W.10 Magistrate Vithal Kakde. The clothes of Sunita and other articles came to be seized. These articles were sent to C.A. C.A. report shows that kerosene was detected on the burnt pieces of petticoat and saree of Sunita and in the can. P.W.11 A.P.I. Adangale started searching for the accused. During the course of enquiry, he came to know that accused had got himself admitted in the Hospital of P.W.9 Dr.Pansare i.e. Shreyas Hospital. Thereafter, A.P.I. Adangale visited Shreyas Hospital and found that the accused had burn injuries on both his palms as well as on his left forearm. Thereafter, the accused came to be arrested and admitted in the Government hospital. In the Government hospital, P.W.6 Dr.Mrs.Karuna Bhise treated the accused. She issued certificate relating to the injury of the accused vide Exhibit-19. She found 15% burn injuries on both the palms and on the left forearm of the accused. According to her, these injuries were caused by flames and they were simple in nature. The accused came to be discharged from hospital on 6.3.1996.

. In the meantime, Sunita expired on 19.2.1996 at 2.00 p.m. The post mortem shows that Sunita died because of shock and 90% burn injuries. After completion of investigation, charge-sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3. The learned Sessions Judge framed charge under Section 302 of IPC against the appellant. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the accused is that of denial. The appellant admitted that he had received burn injuries on both his palms and left forearm. But it is his defence that three days prior to the day of incident, he had sustained these injuries while heating water on the stove due to flare of the stove. The learned Sessions Judge after considering the evidence adduced by the prosecution, has convicted and sentenced the appellant as stated in para 1 above. Hence, this appeal.

4. We have heard Mr.Ranjit Bhosale, the learned counsel for the appellant and Mr.Pednekar, the

learned A.P.P. for the State. We have carefully perused the judgment and order of the learned Sessions Judge as well as the evidence adduced in the present case.

5. The conviction of the appellant is mainly based on two dying declarations made by Sunita. The said dying declarations are at Exhibit-26 and 32. Dying declaration Exhibit-32 has been recorded by P.W.11 A.P.I. Adangale. A.P.I. Adangale has stated that on 17.2.1996 he was working at Ambad Police Station. He was informed on telephone in the wee hours of 17.2.1996 in respect of admission of one patient i.e. Sunita in serious condition in the Government hospital. Hence, he reached the hospital at 4.45 a.m. He made enquiries with P.W.7 Dr.Sankpal whether patient was in a condition to give her dying declaration. Doctor replied in the affirmative. Thereafter, this witness recorded statement of Sunita. Sunita informed that she was having illicit connection with one Shashikant Bhaskar Kale (appellant) and that Shashikant Kale had come to her house on 16.2.1996 at about 10.00 p.m. Shashikant Kale demanded photographs from her but she refused and there was quarrel. Thereafter at about 2.00

a.m. on 17.2.1996 he poured kerosene on her body and set her on fire. This statement was treated as F.I.R. (Exhibit-32). P.W.7 Dr.Sankpal who was attached to the Civil Hospital at Nasik, has stated that Sunita came to be admitted in hospital with burn injuries at bout 3.00 a.m. on 17.2.1996. At about 5.30 a.m. he was contacted by the Police Officer from Ambad Police Station who requested him to certify the medical fitness of the patient Sunita because the officer wanted to record her statement. Accordingly, Dr.Sankpal went to the Ward, examined the patient and found her fit to give her statement. He put his endorsement to that effect on the statement. On going through the cross-examination of these two witnesses, we find nothing to doubt the veracity of their evidence. Hence, we have no hesitation in relying on their testimony.

6. Besides the dying declaration Exhibit-32, one more dying declaration of Sunita came to be recorded i.e. Exhibit-26. The said dying declaration (Exhibit-26) was recorded by Judicial Magistrate P.W.10 Vithal Kakde. This witness has stated that on 17.2.1996 he was working as Judicial Magistrate F.C. and Civil Judge J.D. On 17.2.1996 he was

contacted by A.P.I. Adangale to record the dying declaration of a patient. He reached the Civil Hospital at about 1.20 p.m. He requested the Doctor i.e. P.W.6 Dr.Karuna Bhise to issue fitness certificate of the patient Sunita Sharma. He went to the patient along with Doctor. Doctor examined the patient and certified that the patient was in a fit condition to make a statement. He then asked every one including staff members and police to go out, then he himself recorded the statement of the patient Sunita. On enquiry, Sunita told him that at night, she was at home along with her children. Her husband had gone out on night duty. At about 10.00 p.m. Shashikant Kale (appellant) came to her house. Shashikant demanded some photos from her, which she refused to give. There was quarrel between her and Shashikant Kale. Thereafter, Shashikant Kale poured kerosene on her and set her on fire. Because of the fire, children woke up and she told the children to inform the neighbours. However, before the neighbours reached there, Shashikant Kale ran away.

7. P.W.6 Dr.Karuna Bhise has stated that on 17.2.1996 she was on duty at Nasik Civil hospital. At about 10.25 a.m. the Magistrate Mr.V.M.Kakde

approached her and requested her to issue medical fitness certificate to the patient Sunita for recording her statement. Accordingly, she issued two medical certificates. We find that nothing has been elicited in the cross-examinations of these two witnesses i.e. P.W.10 and P.W.6 so as to disbelieve their testimony. Hence, we have no hesitation to place reliance on their evidence and the dying declaration Exhibit-26.

8. As far as these two dying declarations are concerned, Mr.Bhosale, the learned counsel appearing for the appellant has attacked both these dying declarations on the ground that both the dying declarations bear the thumb impressions of Sunita. He has submitted that this fact shows that both these documents are concocted documents prepared by the Police to falsely implicate the appellant. Mr.Bhosale has pointed out from the post mortem notes that Sunita had sustained 90% burns. He has also pointed out from the post mortem notes that both the hands of Sunita were burnt. Hence, he submitted that it was not possible for Sunita to put her thumb impression on any of these two dying declarations. He further submitted that these two

dying declarations cannot be relied upon. In support of his submission, he has placed reliance upon the decision of the Supreme Court in the case of **State of Punjab Vs. Gian Kaur and another; AIR 1998 S.C. 2809.** In the said case, the dying declarations were not relied upon. On going through the facts of the case, we find that in the said case the deceased had sustained 100% burns. Moreover, the Doctor who had been examined, had categorically stated that both the thumbs of that person were burnt. Under these circumstances, the dying declarations of the deceased came to be disbelieved. We have perused the post mortem notes in the present case and we find that though Sunita had sustained 90% burns and her hands were burnt, the injury was superficial to deep injury. There is nothing on record to show that the extent of burns of her thumb was such that her thumb impression could not be taken. If the burns were superficial, it was very much possible to take thumb impression of Sunita. Thus, we find no merit in this submission.

9. Thereafter, Mr.Bhosale has submitted that as far as the dying declaration Exhibit-32 recorded by P.W.11 A.P.I. Adangale is concerned, A.P.I.

Adangale has not scribed the said dying declaration himself but he got it scribed through a writer. Mr.Bhosale submitted that the said writer i.e. scribe of the dying declaration has not been examined hence, the dying declaration Exhibit-32 has to be excluded from consideration. In support of his contention, he has placed reliance on the decision of the Supreme Court in the case of **Govind Narayan and another Vs. State of Rajasthan; A.I.R. 1993 S.C. 2457.** In the said decision, the Supreme Court has observed that no reliance can be placed on the dying declaration as the scribe of the document was not examined by the prosecution and no explanation has been submitted by the prosecution for not examining the said witness. As far as this aspect is concerned, in the present case, there are two dying declarations whereas in the case relied upon, there was only one dying declaration i.e. (P-3) and the person who had scribed the said dying declaration, had not been examined. In the present case, P.W.10 Magistrate Kakde has recorded the dying declaration Exhibit-26. The Magistrate has clearly stated that he himself recorded the statement of the patient. We find no impediment in relying on the dying declaration Exhibit-26. As far as dying

declaration Exhibit-32 is concerned, P.W.11 A.P.I. Adangale has got the said dying declaration recorded. He has put questions to the patient Sunita and Sunita has replied to his queries and given her statement. No doubt, A.P.I. Adangale has himself not scribed the dying declaration but as the dying declaration was got recorded by him pursuant to the queries made by him to the patient, in such circumstances, P.W.11 A.P.I. Adangale was very much competent to depose about the dying declaration Exhibit-32 and his evidence is sufficient to prove the said document. Thus even though the constable who actually scribed the dying declaration Exhibit-32 was not examined, it would not affect the prosecution case.

10. Besides the two dying declarations on record, the prosecution has examined Jayashree Sharma who was the daughter of Sunita. P.W.3 Jayashree has stated that on the day of incident, her father had gone out for duty. Only her mother, her two brothers and she were present at home. She has stated that she and her brothers were sleeping on the floor and she does not know at what time, accused came into the house. In the said room,

there was a cot and when accused Shashikant used to come to the house, her mother would ask Jayashree and her brothers to sleep on the floor and her mother and Shashikant used to sleep on the cot together. No doubt, when the appellant poured kerosene on Sunita and set her on fire, Jayashree was sleeping on the floor. But thereafter, on account of the heat of the fire, Jayashree woke up and saw her mother burning. She also saw that the accused was there in the house and he immediately ran away. It is pertinent to note that the house of Sunita is consisting of only one room which was 20 feet x 15 feet. Hence, in the night at about 2.00 a.m. presence of Jayashree in her own house was very much natural. Thus, the evidence of Jayashree clearly establishes that the accused was present in the house of Sunita when Sunita was burnt.

11. There is one other circumstance which points out his involvement in the crime, i.e. when the accused came to be arrested, both his hands as well as his left forearm were burnt. No credible explanation has been given by him for the same. Immediately after the incident, the accused went to the dispensary of P.W.8 Dr.Sharad Mahajan.

Dr.Mahajan has stated that on 17.2.1996 at about 2.15 a.m. accused Shashikant Kale came to his dispensary. He saw that both the hands of Shashikant were burnt. Dr.Mahajan has further stated that the burn injuries were fresh and he applied some ointment on the burn injuries. He then advised Shashikant to go to Shreyas hospital for treatment. P.W.9 Dr.Prakash Pansare has stated that on 17.2.1996 at about 4.00 a.m. one patient by name Shashikant Kale came to his hospital. The patient was admitted in his hospital. The patient Shashikant Kale was having burn injuries on both his hands. Dr.Pansare treated the said patient and the patient was in his hospital for half a day. Thereafter, the police came to the hospital and the patient was shifted to Government hospital. P.W.6 Dr.Karuna Bhise was working in the civil hospital at Nasik. She has stated that on 17.2.1996 at 8.00 p.m. the police brought one person by name Shashikant Kale i.e. appellant to the hospital. She noticed burn injuries on the right and left hand and left forearm of the person. The percentage of the burn injuries was 15%. Thus, the evidence of all these three Doctors show that immediately after the incident, the accused had burn injuries on his

hands. No doubt, the appellant had offered explanation that these burns were caused due to flare of stove. However, looking to the evidence on record, we find the stand taken by the accused that he sustained injuries due to flare of stove, is unsustainable.

12. After going through the evidence on record, we find that there is sufficient material which connects the appellant with the crime. Thus, the learned Sessions Judge has rightly convicted the appellant under Section 302 of IPC.

13. In the result, the appeal is dismissed. The appellant is on bail. He shall surrender to the jail authorities. At this stage, Mr.Ranjeet Bhosale, the learned advocate for the appellant has prayed that the appellant may be granted ten weeks time to surrender. In view of this prayer, the appellant is granted time till 30.3.2007 to surrender.

[SMT.V.K.TAHILRAMANI,J.] [SMT.RANJANA DESAI, J.]